

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
PAYNE, et al., : Docket #20cv8924
: 1:20-cv-08924-CM

Plaintiffs, :
- against - :
DE BLASIO, et al., : New York, New York
: July 2, 2021

Defendants. :
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE GABRIEL W. GORENSTEIN,
UNITED STATES MAGISTRATE JUDGE

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None

E X H I B I T S

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None

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2 THE CLERK: Payne, et al. v. De Blasio, et al.,
3 docket #20cv8924. Counsel, please state your appearances
4 starting with plaintiff.

5 MX. REMY GREEN: Good morning, this is Remy Green
6 from Cohen & Green on behalf of the Sow plaintiffs, and
7 I'll be speaking for all the plaintiffs today for the sake
8 of the Court and the reporter in the transcript I should
9 appear as Mx. Green spelled M-X-period, rather than Mr. or
10 Ms., and I'm sure you're all sick of hearing that by now.

14 MR. ROB RICKNER: Rob Rickner --

15 MR. ANDREW STOLL: Good morning, Your Honor -
16 Rob, go ahead.

17 MR. RICKNER: Rob Rickner for the Sierra class,
18 good morning, Your Honor.

19 MR. STOLL: And good morning, Your Honor, for
20 Cameron Yates it's Andrew Stoll, S-T-O-L-L, thank you.

21 MS. COREY STOUGHTON: For the Payne plaintiffs
22 it's Corey Stoughton.

23 MR. DOUGLAS LIEB: Douglas Lieb for plaintiff
24 Charles Henry Wood.

25 MR. TRAVIS ENGLAND: Good morning, this is Travis

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2 | England for plaintiff People of the State of New York.

3 THE COURT: All right, for defendant.

4 MS. DARA WEISS: Good morning, this is Dara Weiss
5 from the New York City Law Department for defendants.

6 MS. ELISSA JACOBS: Elissa Jacobs from the New
7 York City Law Department for defendants.

8 MS. PAT MILLER: And Pat Miller from the New York
9 City Law Department.

10 THE COURT: Ms. Weiss, you'll be speaking for
11 the defendants?

12 MS. WEISS: Yes, Your Honor.

13 THE COURT: Christina, if you could turn, if you
14 know how to do this, use the website to turn off the
15 signals when people come in and out. That'll be a help.
16 And also let me remind counsel that if they're not
17 speaking, they should keep themselves on mute. For members
18 of the public who are listening, this is a public
19 proceeding but no recording is permitted and no
20 dissemination of proceeding is permitted.

21 We're here based on a letter from plaintiffs
22 dated June 29, docket 178, and a response from defendants,
23 docket 184. A few issue are coming up here, and one I
24 don't know that we can solve today, but it seems like it's
25 one that is driving all the others, that is, how many

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2 depositions are going to be permitted in this case.

3 There's a presumption limit obviously of ten per side that
4 I don't think anyone thinks is realistic, and that's fine,
5 but where we are above that, it seems pretty clear from
6 defendants' letter at least that there's no agreement on
7 that. And I think it's going to be very hard to do the
8 planning without arriving at some conclusion. I'm not sure
9 it has to be definitive. But that seems to me to be a
10 driving force behind issues regarding scheduling.

11 I understand there are other issues, I understand
12 that the plaintiffs don't want to depose people until
13 they've gotten certain documents, and I understand the
14 defendants don't want to have depositions left open. That
15 would be extremely inefficient.

16 I would have thought that one way to handle the
17 document situation would be to start by deposing people who
18 are going to be document dependent, people like line
19 officers, I know there are some of them, and it seems to me
20 that one does not need to wait for documents to depose
21 those individuals and that maybe some of the higher-up
22 people one might want to wait for documents. I also
23 understand there's problems in identifying some of the line
24 officers and one of the issues raised in the letters.

25 So I want to talk about, I'm not sure in which

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2 order but I'll hear from each side, I want to talk about
3 the numbers. I had issued an order long ago talking about
4 reserving deposition dates. I would've thought the topic
5 would've come up when people started trying to reserve
6 dates for depositions, or maybe not. I want, you know,
7 numbers, that's sort of one big topic. There is this
8 notion of achieving some efficiency by deposing lower level
9 people first for whom there's going to be little need for
10 documents I assume, though someone could tell me otherwise.

11 I also I guess want to talk about the defendants'
12 proposal about having subject areas in advance for
13 depositions probably is not a big issue for the low level
14 officer people, but for the middle or higher people a much
15 bigger issue. And then I guess the fourth issue would be,
16 and we'll save this for the end, would be the issue of
17 settlement.

18 So, again, number of depositions, how they're
19 going to be done in terms of lower level people and so
20 forth, the protocol, the Bellamy case protocols that Judge
21 Kuo instituted apparently, and settlement. And I'm open to
22 other topics. So that being said, I think we should, if we
23 can talk about them separately, let's talk about them
24 separately. If not, people can lump them together. Let me
25 hear from plaintiffs I guess first.

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2 MX. GREEN: Well, Your Honor, and this is Remy
3 Green, good morning. I think you've gotten things almost
4 entirely right, and to your point we've done exactly what
5 you thought we would do, which is we have very much focused
6 the early depositions on the line officers. In fact,
7 that's why, for example, we thought it was problematic that
8 the person, that the single person that defendants have
9 offered up is a document intense deposition while the
10 beginning of our schedule that was supposed to start in
11 June was all line officers with I think maybe one
12 exception. And so it was all depositions we don't
13 anticipate needing documents, but, you know, I think the
14 only comments we've made is that, you know, you don't know
15 what you don't know, it could be that it turns out that
16 there's a document that they really should've given us and,
17 or we discovered a document that we should've had during
18 the deposition and we need to leave it open.

19

20 But I think the real point is, yes, we've done
21 exactly what you think we should've done is which we
22 focused on people for whom we won't need documents, and
23 those are the people we're trying to get ordered today.

24

25 And to Your Honor's point, we did meet and confer
on the schedule. We forced this issue. We asked for a
meet and confer, and, you know, defendants really were not

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2 willing to give us scheduling. So then we proposed the
3 schedule. They even agreed by last Friday to give us a
4 counterproposal on a schedule so we can start depositions
5 yesterday, and the reason we're here today is they did not
6 ever give that to us.

7 So I think, Your Honor, two of the points, to the
8 point that you are making, Judge, we are very much I think
9 of a mind. In terms of, you spoke to the Bellamy proposal,
10 the first we heard of that ever was yesterday. We have not
11 really had a chance to dig into it. I think on its face
12 there are some issues with it. I understand that Bellamy
13 concerned, you know, decade of topics whereas we're really
14 looking to depose people about stuff that happened in the
15 last year. And I think beyond that the bigger issue is
16 that, you know, we've talked about the issues with the
17 interrogatory responses and getting individual officers,
18 getting information. And where we are on that it's hard
19 for us to tell them or to tell defendants exactly what
20 (indiscernible) officer is at because we don't know.

21 Now, the 2,300 documents defendants produced this
22 week I think have some of that information, not all of it
23 but some of it. And so as we process that, you know, we
24 just got it, but as we process that, there might be some
25 information we can do. But this is really information that

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2 is in the possession of defendants, and we've, as you've
3 suggested, noticed line officers.

4 I think that the Bellamy stuff is just not ripe
5 right now though. We haven't conferred on it at all. And
6 I think I'll address the other topics, I'll let you break
7 it up, but I think we are really here narrowly today on the
8 issue that we need to start depositions.

9 THE COURT: Okay, well, let me hear from
10 defendants on this.

11 MS. WEISS: Thank you, Your Honor. As we noted
12 in our letter and I see now, as I read it, it may not be
13 precisely clear, but we do note that the 20 witnesses that
14 we're talking about in the second page of our letter, those
15 are 20 of the witnesses that plaintiffs have in the
16 beginning of their list, meaning they're basically the line
17 officers. And these are the folks that we are lining up
18 for the first depositions. Ten of them we've already
19 confirmed for the first couple of weeks in July, not this
20 week of course, but starting next week. We do intend on
21 producing those first because we do understand that for the
22 most part they are not document intensive witnesses.

23 But there are some documents that would be
24 possibly used which we have produced to the plaintiffs
25 quite a while ago. There might be body camera footage that

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2 might be applicable to these officers which we did produce
3 to defendants, I mean, I'm sorry, to plaintiffs. So we are
4 definitely ready to go with these defendants, and 20
5 witnesses I think is an excellent start.

6 Then when we start to get to the middle and
7 higher ranking officers, we produced I think it was 24,000
8 pages this week. We're going to produce, I don't know the
9 exact number, but it's probably another I want to say 1,900
10 documents next week. I'm not sure how many pages that
11 equals; probably about 15,000 pages next week. And that
12 will get us certainly closer to documents that plaintiffs
13 will need to start deposing higher ranking officers. But
14 when it comes to them, I think it's very important that
15 plaintiffs will let us know what they intend to ask these
16 officers about.

17 According to interrogatories they've served and
18 document requests they've served, they're going back to
19 questioning about - I think I lost audio for a second
20 there. They're going back to questions about protests
21 dating as far back as the WEX demonstrations in 2002. So
22 if they're intending on asking NYPD employees about things
23 that happened almost 20 years ago, we certainly are going
24 to need to know about that and about the documents that
25 they're referring to so we can properly prepare the

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2 officers and especially higher ranking officials for this
3 type of questioning.

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THE COURT: I think - it's certainly good to
5 know that the defendants are prepared to offer up a number
6 of witnesses in the next week or so, the line officers.
7 That's a good start. I think that there's a communication
8 problem here because it seemed to me from the letters that
9 they, you know, thought that they were going to get a
10 proposal like that from you earlier in the week, and then
11 it just didn't come. And, therefore, they wrote their
12 letter, and, therefore, I sent my comments and you wrote
13 your letter and then you made this proposal. So I think
14 going forward, Ms. Weiss, and both sides, we need to be as
15 responsive as possible to avoid people running to court
16 because you didn't get something that they thought. I
17 don't know if your fault or their fault. They thought that
18 they were going to get at a certain time and then didn't
19 get.

20

The plaintiffs are understandably concerned about
21 moving the case along, so I'm not going to blame them for
22 precipitous letters, but I'd like you to do everything in
23 your power to avoid those letters by giving them as much
24 information as possible about what you're prepared to do.
25 Do you think something went wrong here on that front, Ms.

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2 Weiss?

3 MS. WEISS: Well, Your Honor, with all due
4 respect, I informed plaintiffs that we were busy, very busy
5 with all of our available resources getting the documents
6 prepared to serve on them Wednesday to comply with your
7 order, and we just weren't able to get the deposition
8 schedule out to them yet. And before we got a chance to
9 get to it, they wrote to Your Honor for the conference.

10 THE COURT: Okay --

11 MX. GREEN: Your Honor, if I may. Defendants
12 made a firm commitment in the meet and confer to get us the
13 schedule last Friday. They didn't. And I think in terms
14 of the resource issue, I mean we're obviously going to tee
15 this up next week, but the rate at which they're getting
16 through documents, and they haven't completed collection
17 yet, they haven't collected any communications, for
18 example. They told you last week that they had 50,000
19 documents. They got 2,300 this week and Ms. Weiss just
20 said that they got through, they're going to get through
21 1,700 next week. That isn't okay. They will not make it
22 through that by July 31. And so if getting through 2,000
23 documents a week consumes every resource the Law Department
24 has, we won't be able to take depositions in this case, and
25 that's not okay.

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THE COURT: Well, I think they've offered you ten depositions before July 19. Am I wrong?

MX. GREEN: I mean I guess I understand that, Your Honor, but even in their letter they haven't identified who those people are.

THE COURT: All right --

MX. GREEN: And I think if they had them ready, they would have named them in their letter.

THE COURT: Ms. Weiss, can you send the schedule today, the proposed schedule?

MS. WEISS: I have the names, the exact dates - yes, we can.

THE COURT: Okay, do that. This is what I'm talking about. The sooner you can do things like that, the more we can avoid conferences like this. So let's - I'm not sure we're going to make any big decisions today. The defendant needs to make the proposal on the depositions.

Taking us through the 19th is hopeful, but I think you also at some point next week you need to give whatever the next launch or next round is going to be of depositions after that date that you're prepared to commit to. Once again, I assume there are enough line officers that take us through July that won't be too document dependent. So that should be a goal.

1 Any reason you can't do that by next week, put
2 together a schedule - I mean today you're going to take us
3 through the 19th. There's not that much more left of July
4 after that. Can you take us through the end of July,
5 perhaps the beginning of August with your proposals?

6 MS. WEISS: Yes, Your Honor, we absolutely can,
7 but I just do want to point out that the plaintiffs on
8 their proposed schedule did tentative schedule some line
9 officers for dates in August and September. So we have not
10 contacted those line officers yet because we were trying to
11 do it in roughly the same order that they put in their
12 proposal schedule. If they would like to change the order
13 of those line officers, then we can certainly contact the
14 ones that they scheduled for later and try to get them
15 scheduled for sooner rather than later.

16
17 (interposing)

18 THE COURT: All right --

19 MX. GREEN: We want witnesses in the order we
20 noticed. But I think to that point I think we do need to,
21 at this point, be double-tracking depositions, especially
22 with the, you know, the document issues and the issues just
23 of getting through things on this schedule so that we can
24 crystallize what issues are in dispute. We do need to be
25 double-tracking depositions.

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2 THE COURT: Well, before we get to double-
3 tracking, sometimes we don't always get what we want, Mx.
4 Green, and if it's the case that you, it's more efficient
5 to do line officers first because - I mean I suppose if you
6 wanted some higher level person and, I mean you should
7 assume you're never going to get a deposition reopened. So
8 if you would rather say, you know what, I'll wait on the
9 documents, I'll do this higher level person knowing I'll
10 never see that person again, that would seem to me an odd
11 choice, but that's not impossible. It's something that you
12 could negotiate with the defendants. But as a matter of
13 efficiency, it seems better to do line officers first.

14

MX. GREEN: Yeah, no, Your Honor, I completely
15 agree. I think that the schedule we have is the product of
16 a lot of exactly this kind of discussion between the six
17 teams we have. And I think we have the same goals in mind,
18 we have exactly those concerns in mind, and we understand
19 that it is not, you know, the default to get a deposition
20 reopened certainly.

21

THE COURT: Okay, now you used the D word there,
22 which is double-tracking of depositions, and I don't - this
23 comes back to an issue that I don't think we can do today
24 which is the number of depositions, and there's absolutely
25 no need for double-tracking if there are enough days before

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2 December to do an appropriate number of depositions. I've
3 made no decision on that. But there's no reason to do
4 double-tracking for the sake of doing double-tracking. It
5 should only be done if there literally aren't enough days
6 to accomplish what should be accomplished. So I don't know

7 --

8 MX. GREEN: Of course.

9 THE COURT: -- if you're ready to have the
10 discussion with the other side, but whoever is ready to
11 have that discussion should try having it, certainly not on
12 this phone call. And if impasse is reached, then you know
13 how to get my attention. But that's going to have to be
14 part of the discussion before we ever talk about double-
15 tracking depositions.

16 MX. GREEN: Understood, Judge. I think you have
17 asked us to raise it separately, so I will. I do think one
18 of the issues though is, as came up at the conference last
19 time, we don't know who put hands on our clients, and we
20 are taking the first step in figuring that out. And so,
21 you know, we don't even know the names of most of the line
22 officers that we really want to depose yet. And so the
23 goal of double-tracking here is to be in a place where we
24 are actually, in a timely manner, deposing the line
25 officers we actually want to depose.

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2 THE COURT: I understand your desire. I
3 understand the logic. But, once again, this is a perfect
4 world and I suppose in a perfect world we would have years
5 to do all this; we don't. So choices are going to have to
6 be made, and I'm not guaranteeing you that double-tracking
7 is going to be one of those choices. So we'll put it off,
8 but just be aware that just because there were four people
9 involved in someone's arrest doesn't mean you'll get a
10 deposition of all four people.

11

MX. GREEN: That makes sense, Judge.

12

THE COURT: Let's see, I think we've gone as far
13 as we can in number of depositions. We've talked about the
14 lower level people. We're putting off the Bellamy protocol
15 for discussion among the parties. I've already told the
16 City they should be making proposals for depositions
17 through August. If there's some problem, you know how to
18 reach me. The only other thing I have on my list is
19 settlement. Before we get to that, is there anything else
20 from the plaintiffs' side?

21

MX. GREEN: No, Judge, I think we'll talk about
22 documents next week. Perhaps, I guess this would be the
23 end of the conference, but maybe we should, just so we're
24 not fighting about schedules, if we could schedule a
25 conference because I promise we'll be writing a letter

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2 Tuesday.

3 THE COURT: Okay, let's - Ms. Weiss, before we
4 get to settlement, anything else that you think we should
5 do today?

6 MS. WEISS: Yes, Your Honor. We - I'm sorry.

7 We wanted to know if the Court would consider waiving the
8 fee to admit some attorneys from our office pro hac vice
9 who could help out in defending some of these depositions.
10 We have a number of attorneys in our office who are very
11 qualified and very knowledgeable in this area of the law
12 but are simply not admitted to practice in the Southern
13 District. So we were wondering if the Court would consider
14 waiving the fee to have them admitted so that they could
15 help out in defending these depositions.

16 THE COURT: I didn't realize the City was in
17 such dire straits that our fee for pro hac waiver was an
18 impediment. But I haven't even looked at our rules to see
19 if I have that power. This should be the subject of a
20 letter, so put whatever you need to in a letter.

21 MS. WEISS: Thank you.

22 THE COURT: And, you know, we'll take it from
23 there. You should also look at our pro hac vice process
24 which requires a little bit of paperwork, showing people in
25 good standing. I mean I have the power to admit someone,

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2 you know, for a singular purpose like a single deposition
3 on a single date, but if there's going to be any regular
4 practice, it seems to me that it should go through the
5 normal pro hac vice admission process which is not terribly
6 onerous. And if you tell me the fee is onerous, I don't
7 know if there's some in forma pauperis version that the
8 City wants to ask for, but you could put all that in a
9 letter.

10 MS. WEISS: We will do that, thank you, Your
11 Honor.

12 THE COURT: Okay, and if it wasn't clear, I was
13 kidding. Anything else before we talk settlement, Ms.
14 Weiss?

15 MS. WEISS: No, nothing else, Your Honor.

16 THE COURT: Okay, so, all right, now I'm
17 promised that I'm getting a letter next week which would
18 mean I would, on Tuesday, which would mean you would have a
19 response due Thursday. I don't mind. I don't want to do
20 this on a regular basis, but in light of representation I'm
21 prepared to put a conference on for this next Friday
22 morning at the same time. Any problem with that time or
23 date, Ms. Weiss?

24 MS. WEISS: Your Honor, I am going to be out of
25 town next Friday and the following Monday.

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THE COURT: Okay. Well, I have an extremely heavy week the week of the 12th. I'm on what's called criminal duty where I have to deal with every arrest that comes in and every search warrant, which means - I'm sorry?

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MS. WEISS: I'm sorry, Your Honor --

7

(interposing)

8

MS. WEISS: Of course, as you know, I do have more than competent co-counsel with me on this case who can most certainly handle a conference in my absence.

11

THE COURT: Okay, then let's do it next Friday at 10:30. Is that all right with plaintiffs?

13

MX. GREEN: Your Honor, I think this is going to ultimately be a conference where, as you said in the last conference, you need somebody who knows everything. My understanding is for this case this is Ms. Weiss. I certainly think she knows a lot --

18

THE COURT: That's why I said if you cloned your knowledge, I need someone who knows everything.

20

MS. WEISS: Well, I don't know what the basis of this letter is going to be. Hard to tell if my co-counsel Ms. Jacobs knows enough to be able to handle the conference. So if we could put it off until I return from my mini vacation, you know, that would be great. It's hard for me to say.

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2 THE COURT: All right, let's take a chance and
3 put it on for the 13th --

4 MS. WEISS: I'm sorry, I lost audio there for a
5 second again.

6 THE COURT: It was our fault. Tuesday the 13th.
7 I probably can carve out half an hour. So let's see what
8 happens if we try for 10:30 on the 13th. If I suddenly
9 move it, I'll certainly give you notice.

10 MX. GREEN: Thank you, Judge. Given that, you
11 know, I would ask could we do our letter Wednesday and
12 theirs Friday since that leaves the right amount of time?

13 THE COURT: Well, the problem is you've lost Ms.
14 Weiss.

15 MX. GREEN: Oh, you're right, okay. We'll get
16 it in Tuesday.

17 THE COURT: Okay. All right, so I'll issue some
18 kind of order about the 13th at 10:30. Last issue then,
19 settlement. It seems to me that all defendants are asking
20 for right now is a proposal. How soon do you think you
21 could get that to the defendants?

22 MX. GREEN: Your Honor, we actually went back
23 and forth about this kind of at length and without
24 discussing the contents of settlement negotiations. The
25 problem is we still don't have a single policy document,

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2 and what we told defendants, when they wanted to talk
3 settlement some time ago, is that we need them to make a
4 (indiscernible) targeted production of policy documents so
5 that we can intelligently propose policy reforms, and they
6 have refused to do that. And we still don't have policy
7 documents in their productions, you know, some three months
8 later, two months later. So I don't know how we can make a
9 proposal in this case given, I mean from the Attorney
10 General's perspective, for example, there are no damages to
11 talk about. From our perspective in the Sow case, we have
12 class damages but we also have, you know, we have
13 injunctive relief we're seeking. And so I just, we can't
14 make a proposal.

15 MS. BUTLER: Okay, Ms. Weiss, yes.

16 MS. WEISS: If I may, Your Honor, with respect
17 to policy documents, the Attorney General did a full review
18 last summer and has thousands and thousands of pages of
19 policy documents. And I understand that they're not
20 looking for monetary relief, but all the other plaintiffs
21 are looking for monetary relief, and they were deposed, and
22 I certainly would assume that the plaintiffs who are
23 looking for monetary relief do have a number in mind. So
24 at the very least the Attorney General can propose what
25 sort of injunctive relief they're looking for, and the

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2 other plaintiffs could certainly propose the monetary
3 relief they're looking for.

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And there were public hearings on this matter.

5 There are a lot of public police documents that all parties
6 can certainly look at. There's been police reform that is
7 public that all parties can look at it. But it's kind of a
8 copout for plaintiffs to say that they can't make any kind
9 of proposal because the defendants haven't provided policy
10 documents. The parole guide is public, I mean there are -
11 I can't even imagine the number of public documents. Plus
12 the defendants have provided a number of policy documents
13 thus far. So they've got to be able to propose something
14 that we could at least start to talk about.

15

THE COURT: Well, Ms. Green --

16

MX. GREEN: Your Honor, I think to that point -
17 sorry, please go ahead.

18

THE COURT: I think I've confirmed before you
19 have access to whatever the Attorney General got, is that
20 right?

21

MX. GREEN: Yes, that's right, Your Honor, and I
22 think to this point --

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THE COURT: Do you think there's more?

24

MX. GREEN: We think there's a lot more, and let
25 me give an illustration that I'm not entirely sure

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2 ultimately bears out, but last week when we were here, Ms.
3 Weiss talked about how the police, her contact at the
4 police department had told her that the incident commander
5 is not, in fact, the highest ranked person on the scene.
6 Well, if you look at the patrol guide, in black and white,
7 that's the definition of incident commander. So if Ms.
8 Weiss's contacts at the police department are correct that
9 that's not it plays out in practice, then there's obviously
10 other documents or other information or other, etc., etc.

11 And I think as we know from many, many, many of
12 these cases, the patrol guide, which is what they keep
13 referring to, is not the be all end all of police policy.
14 It's barely even a starting point. And that doesn't get
15 into training, that doesn't get into the new training that
16 they claim was the case. And so if we're proposing policy
17 based on policy that's no longer in effect, you know, it's
18 almost nonsensical.

19 THE COURT: Well, I'm not sure I agree. I mean
20 if they say here's the patrol guide, that's our policy, and
21 whatever we gave the AG, that's our policy, I think you
22 should be able to say, well, here's what we think it should
23 be. I'm not --

24 MX. GREEN: Your Honor, I should also - I should
25 also say the patrol guide isn't public. There are parts of

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2 it that are public, but the whole thing is not public, and
3 they have not produced it. We do not have - we have barely
4 anything, if anything. I don't - I don't know how strongly
5 I can say that.

6 THE COURT: Well, I mean I don't know what to
7 say here. The City says that the Attorney General has it,
8 you say it's not there. I can't really deal with that.
9 It'll come out how it comes out. I would still think that
10 the plaintiffs could come up with a proposal based upon
11 what the City claims is all that there is, which is what
12 they're now claiming.

13 But I think it's a little soon to force this. I
14 mean there's two pieces to settlement. One is going to be
15 the injunctive relief which is going to be a long, bigger,
16 a bigger process than whoever's seeking damages. Is the
17 City interested in bifurcating settlement or do they want
18 one big settlement?

19 MX. GREEN: Your Honor, may I ask one thing
20 which is would you ask Ms. Weiss to confirm whether the
21 policies that they gave the AG are, in fact, the current
22 policies?

23 THE COURT: Ms. Weiss, do you know the answer?

24 MS. WEISS: The policies that were given to the
25 Attorney General's office were the policies that were in

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2 effect at the time they were given to the Attorney
3 General's office. It's now nearly a year later and things
4 have changed.

5 THE COURT: Well, that's going to be
6 significant, Ms. Weiss, to them because to the extent
7 they're seeking injunctive relief, what's happening now
8 also matters, not merely what was happening at the time of
9 demonstrations. Do you understand that?

10 MS. WEISS: Yes, absolutely, but these changes
11 have been publicized and we even annexed them to our
12 dismissal motion that we made earlier in this case. So
13 plaintiffs do have --

14 THE COURT: I mean if you say it - once again,
15 we're back to where I was. You say now you produced
16 everything there is to produce, you know, I don't know what
17 to say other than that's your claim, and for some reason
18 plaintiffs are doubting that. And I can't resolve that.
19 But let's get to my question if you don't mind. Ms. Green
20 had that interlude. But my question was, Ms. Weiss, are
21 you interested in bifurcating settlement in terms of
22 damages and injunctive relief?

23 MS. WEISS: That's certainly something we can
24 discuss, and discuss with our client. I can't answer that
25 question right now.

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2 THE COURT: Okay, you know, this settlement
3 certainly should continue to be discussed between the
4 parties. I mean it seems a little soon to have literally a
5 settlement conference, at least with me. I don't know if
6 there's some other neutral out there that perhaps wants to
7 volunteer that both of you could be happy with that might
8 be able to do more of the nitty gritty in terms of helping
9 the parties put this together. But it sounds like it's a
10 little soon for that from the plaintiffs' point of view
11 anyway. But keep that in mind as a possibility.

12 All right, I think I'm done from my end.

13 Anything else from the plaintiffs' side?

14 MX. GREEN: Your Honor, if we could just confirm
15 one final time. As I understood it, defendants are going
16 to give us the schedule through the 19th today and then
17 fill in the rest next week. I forget what date you said.

18 THE COURT: I said next week. So I guess if
19 you're leaving, Ms. Weiss, I give you till the 8th, if your
20 colleague does it till the 9th.

21 MS. WEISS: Okay.

22 THE COURT: Is that understood, Ms. Weiss?

23 MS. WEISS: Understood.

24 THE COURT: Okay on plaintiffs' side?

25 MX. GREEN: If we could, I assume that the

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2 people they will be giving us will be, you know, line level
3 officers and the people we had noticed let's say for the
4 first three weeks of our schedule or two weeks of our
5 schedule.

6 THE COURT: Let's see what it is when it comes.

7 MX. GREEN: Well, fair enough.

8 THE COURT: Anything else from the plaintiffs?

9 MX. GREEN: No, that is the only housekeeping I
10 have. Thank you, Judge.

11 THE COURT: Anything else from defendants?

12 MS. WEISS: No, Your Honor.

13 THE COURT: Okay, thank you everyone. Good bye.

14 MS. WEISS: Thank you.

15 (Whereupon the matter is adjourned.)

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I, Carole Ludwig, certify that the foregoing

transcript of proceedings in the United States District

Court, Southern District of New York, Payne, et al. versus

De Blasio, et al., docket #20cv8924, was prepared using PC-

based transcription software and is a true and accurate

record of the proceedings.

Signature Carole Ludwig

Date: July 7, 2021